

SEP 22 2005


PTO/SB/21 (09-04)


Approved for use through 07/31/2008. OMB 0651-0031
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

TRANSMITTAL FORM (to be used for all correspondence after initial filing)	Application Number	10/707,148	
	Filing Date	11/24/2003	
	First Named Inventor	CHABOT	
	Art Unit	3761	
	Examiner Name	GARCIA, E.	
Total Number of Pages in This Submission	9	Attorney Docket Number	6536-0301

ENCLOSURES (Check all that apply)		
<input type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment/Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Reply to Missing Parts/ Incomplete Application <input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____ <input type="checkbox"/> Landscape Table on CD	<input type="checkbox"/> After Allowance Communication to TC <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below):
Remarks Request for Reconsideration of Petition to Make Special Please forward to Technology Center 3600, Randolph Reese, SPE.		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT			
Firm Name	Chabot & Associates		
Signature			
Printed name	Ralph D. Chabot		
Date	09/22/2005	Reg. No.	39,133

CERTIFICATE OF TRANSMISSION/MAILING			
I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below:			
Signature			
Typed or printed name	Ralph D. Chabot	Date	09/22/2005

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

RECEIVED
CENTRAL FAX CENTER

Attorney's file 6536-0301

SEP 22 2005

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Renata Chabot
Serial No.: 10/707,148
Filed: November 24, 2003
Group Art Unit: 3761

For: METHOD FOR LIMITING MOVEMENT OF AN INFANT IN A PARTICULAR
DIRECTION

REQUEST FOR RECONSIDERATION OF PETITION TO MAKE SPECIAL

Commissioner of Patents and Trademarks
Alexandria, VA 22313-1450

Sir:

A "DECISION ON PETITION TO MAKE SPECIAL" was mailed on July 26th 2005 from Technology Center 3600. The pending petition was dismissed.

Applicant submits this Request for Reconsideration which is believed to correct the deficiencies that were part of the original Petition to Make Special.

It is requested that the referenced application for a METHOD FOR LIMITING MOVEMENT OF AN INFANT IN A PARTICULAR DIRECTION be given priority under 37 C.F.R. §1.102(d).

Pursuant to MPEP §708.02 VIII, the following requirements are/have been submitted:

(A) The appropriate fee set forth in 37 CFR §1.17(h) was previously submitted with the original petition. This Request is being timely submitted within two months of the mailing of the Decision to Dismiss. No late fees are believed due.

(B) Applicant elects without traverse if the Office determines that all claims are not directed to a single invention¹.

(C) Applicant's attorney, Ralph D. Chabot states that a pre-examination search was made by a professional searcher.

The following is a listing of the field of search:

5/417, 732; 128/846; and 256/1

(D) Pursuant to MPEP §708.02 VIII(D), copies of the references deemed most closely related to the subject matter encompassed by the claims do not accompany this paper and are not required since each reference is already of record in this case either by an IDS electronically filed 11/19/2004 or by an IDS mailed by applicant and identified on PAIR as being received on 11/26/2004. At the time the original petition was filed, Applicant deemed the following five references most closely related to the subject matter encompassed by the claims:

1. US Pat. No. 5,168,831;
2. US Pat. No. 3,699,926;

¹ Prosecution on the merits has already commenced. Applicant has elected a set of claims without traverse. See PAIR - Applicant's Response dated 04/07/2005.

3. UK Patent Application GB 2303040
4. US Pat. No. 5,345,731;
5. US Pat. No. 6,199,230.

(E) Detailed Discussion of the References.

Brief discussion of the pending application.

Claims 1-5 of the pending application are directed to a method for preventing movement of an infant in a particular direction. The method comprises the placement of a barrier upon flooring. The barrier can comprise either a single strip having a plurality of low-profile upward extending sections or it can comprise a plurality of individual units configured on the flooring to collectively define a barrier. The upward extending sections are designed so that the skin can not be punctured but yet may still cause temporary discomfort to an infant. The infant will quickly recognize that it can not cross the barrier without experiencing some uncomfortable feeling.

The barrier, being low-profile, allows for the easy movement of adults and older children across the barrier while, because of the infant's physical limitation, the infant does not possess the sufficient length of stride necessary to step over the barrier. No gates or fences are necessary. The child is limited in movement since it can not cross the barrier yet he has the entire room to move about rather than being restricted within a small enclosure such as a playpen.

1. US Pat. No. 5,168,831 issued to Ittershagen et al. The '831 reference discloses a tacky-surface animal repeller that comprises a sheeting material 10 coated on both sides

with non-permanent adhesive. (Abstract). Animals, once touching the adhesive surface purportedly will be sufficiently discouraged from attempting to cross the sheeting material.

Original independent claims 1, 2 and 5 of the pending application are directed to a method for preventing movement of an infant in a particular direction. Infant movement is prevented in the pending application by creating a barrier upon the floor surface by the use of a plurality of low-profile upward extending sections having a top surface design that is incapable of puncturing the skin of an infant. The infant, attempting to cross, will experience discomfort and eventually become disinterested in making further attempts to cross.

The '831 reference is directed to a sheet material 10 having a sticky surface that, when touched by an animal, will require a forceful and unpleasant effort for the animal to free itself (Abstract).

By contrast, the pending application does not incorporate a tacky surface; rather, it incorporates upward extending sections that are incapable of puncturing the skin of an infant. The '831 reference does not teach, nor suggest the use of upward extending sections, or use of sheet material 10 for limiting the movement of an infant.

Therefore, the '831 reference does not disclose or suggest all claimed elements in the original claims of the pending application.

2. US Pat. No. 3,699,926 issued to Stockl. The '926 reference discloses a floor mat for animals having regularly distributed projections. (Abstract). However, one object of the invention is to provide a mat having a soft and flexible support to the feet or bodies of lying animals. (Col. 1, lines 31-35). The mat of the '831 reference is used for walking upon. The

distributed projections or rounded upper knobs 3 provide sufficient grip for the feet of animals. Col 2, lines 26-28. By contrast, the present invention discloses a barrier that discourages contact by an infant. The '926 reference does not teach, nor suggest the use of rounded knobs or distributed projections to deter animals or infants from stepping upon.

Therefore, the '926 reference does not disclose or suggest all claimed elements in the original claims of the pending application.

3. UK Patent Application GB 2303040A filed by Phillips. The GB '040 reference discloses an animal deterrent mat where a pad with upwardly projecting cones are strategically positioned along the pad surface and the pad is placed under the surface of the soil revealing only the tip of the cone. When an unsuspecting animal would contact one or more of the cone tips of the partially buried pad, it would experience discomfort and be deterred from entering the specific area of the garden in the future. (Page 1). The cones of the GB '040 reference could be considered similar to the upward extending sections of the pending application. However, the GB '040 reference does not teach nor suggest using its method for deterring movement of an infant. Since this reference requires it to be positioned under the surface of soil, such a method is not suitable, nor contemplated for use on a floor. By contrast, the present invention is in full view of the infant and the infant learns what the barrier is and that it is not to be crossed.

Therefore, the GB '040 reference does not disclose or suggest all claimed elements in the original claims of the pending application.

4. US Pat. No. 5,345,731 issued to Sykes. The '731 reference discloses a baby

walker barrier having barrier elements 10 configured to provide a positive means for stopping movement. (Col.3, lines 33-36). The barrier essentially acts as an enclosure for confinement. The barrier prevents movement of wheels 16 of walker 12 across elements 10. The '731 reference will not restrict an infant once that infant obtains the ability to crawl and move. By contrast, the barrier of the pending application is used for infants who are crawling or able to stand and walk. The pending application using temporary discomfort as the means for preventing movement while the '731 reference does not. The '731 reference does not teach, nor suggest limiting the movement of an infant who is not confined to a baby walker, using upward extending sections.

Therefore, the '731 reference does not disclose or suggest all claimed elements in the original claims of the pending application.

5. US Pat. No. 6,199,230 issued to Parikh. The '230 reference discloses a portable play mat having foam block walls on its perimeter. (Col 2, line 67). This patent will not restrict an infant once that infant obtains the ability to crawl and move. Once the infant/toddler is able to crawl, the corral converts into a playing and napping area. Col. 3, lines 19-20. The '230 reference does not teach or suggest that the foam block wall can be used to discourage or limit movement in a particular direction when an infant attains the ability to crawl and walk.

Therefore, the '230 reference does not disclose or suggest all claimed elements in the original claims of the pending application.

As stated earlier, substantive examination of the pending application began

subsequent to the filing of the original petition request. The Examiner has rejected the pending claims under 35 USC 102(b) as being anticipated by Marshall U.S. Pat. No. 4,431,166². The '166 patent is clearly distinguishable from the pending claims. The '166 patent is directed to a trash can mat that is located about the perimeter of a garbage can. The mat has to be sufficiently wide to carry out its intended purpose; that being to prevent a large dog from standing on its hind legs and then use its weight to knock over the garbage can. As described in the specification, the mat comprises a plurality of spikes that are of sufficient length to penetrate past the paw pads of a large dog and inflict pain to the adjacent soft tissue. The mat is designed to be stood upon so an adult may deposit trash into the container.

The Examiner's grounds for his 102 rejection was that: "it is well established that the patentability of method claims is based on the recited method steps and not recited structure unless the structure is affected in the manipulative sense by the method steps".

Applicant's response is that the Marshall reference does not teach, or suggest using applicant's method for using a barrier to limit movement of an infant. To find anticipation of claims, the prior-art embodiments must possess the properties expressly recited in the claims. Property limitations can serve to distinguish claimed subject matter from other products. *E.I. du Pont de Nemours & Co. v. Phillips Petroleum Co.*, 849 F.2d 1430, 7 USPQ2d 1129 (Fed. Cir. 1988).

The depth of the barrier in the claimed invention can not be the same and must be less than the depth of Marshall's garbage can mat. The barrier depth is sized to deter an infant from attempting to cross while permitting adults and older children to cross. The

² The '166 patent is the subject of Applicant's pending appeal which was filed July 21, 2005.

Marshall reference does not teach nor suggest crossing the mat; rather, it requires standing upon the mat.

If Marshall's garbage can mat were sized according to applicant's method of using a barrier, i.e. to allow for adults and older children to cross, the intended purpose of Marshall would be defeated. In other words, if Marshall's mat were appropriately sized so older children and adults could step across, so too could a large dog position its hind legs behind the barrier and still be able to place its front paws upon the garbage can to knock over.

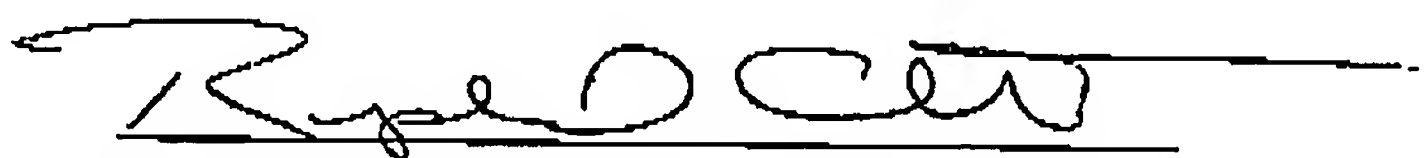
CONCLUSION

None of the cited references teach or suggest a method for preventing an infant or toddler from continuing movement in a particular direction utilizing a low-profile barrier which permits traversal by older children and adults.

It is respectfully requested that this Petition to Make Special be granted.

Respectfully submitted,

Dated: September 22, 2005



Ralph D. Chabot, Reg. No. 39,133
Attorney for Applicant